Community Development Commission

May 20, 2009

TO: Each Supervisor

FROM: Cordé D. Carrillo, Acting Executive Director

SUBJECT: STATUS OF CAPITAL FUND RECOVERY COMPETITION GRANT IN H.R. 1, THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) OF 2009 FOR PUBLIC HOUSING

The purpose of this memorandum is to provide you with information regarding the Notice of Funding Availability (NOFA) for Capital Fund Recovery Competition Grants authorized by the American Recovery and Reinvestment Act of 2009 (ARRA). The U.S. Department of Housing and Urban Development (HUD) released the Capital Fund Recovery NOFA on May 7, 2009.

HUD will award $995 million nationally, based on a competitive basis, to Public Housing Authorities (PHAs) for site improvements, increased accessibility for the elderly and/or persons with disabilities, gap financing for stalled public housing re-development projects, and the creation of sustainable, environmentally-friendly housing developments.

The restrictive eligibility requirements imposed by HUD for receipt of Capital Fund Recovery Competitive grant awards significantly impacts the ability of the Housing Authority to meet the intent of ARRA to improve public housing communities and stimulate local economic activity. Of particular concern is that the NOFA gives greatest preference to "High Performer" PHAs based on results from the 2006-2007 Public Housing Assessment System (PHAS) and imposes a "normative expenditure rate" requirement on 2005 and 2006 Capital Fund grants. Due to the requirements relating to "High Performer" status and "normative expenditure rate" of the 2005–2006 Capital Fund grant, the Housing Authority will only be eligible for funding after HUD distributes awards to PHAs who meet the aforementioned eligibility thresholds.

HUD issued the last agency-wide PHAS score in Fiscal Year 2006–2007, which designated our Public Housing program as a "Standard Performer." This designation means that we performed at acceptable levels and met HUD's expenditure requirements. Further, the "normative expenditure rate" requirement contained in the NOFA is outside current statutory requirements for the Capital Fund Program and is more stringent and arbitrary. This requirement excludes PHAs like the Housing Authority who have consistently complied with all existing statutory and regulatory requirements applicable to the obligation and expenditure of public housing capital funds. HUD's reliance on an outdated performance assessment score and an arbitrary expenditure requirement are not accurate reflections of the Housing Authority's ability to manage and administer federal funds. During the most recent on-site Asset Management Review conducted in 2008, HUD staff commended the Housing Authority for property improvements, maintenance, and appearance of the housing developments. The Housing Authority has also consistently received positive outcomes on HUD reviews of Capital Fund Program administration.

Attached for your reference is a May 14, 2009 letter submitted by the Council of Large Public Housing Authorities (CLPHA) to HUD Secretary Shaun Donovan requesting an addendum to the NOFA to amend its restrictive eligibility requirements. The Housing Authority agrees with CLPHA and is preparing a separate request to Secretary Donovan to amend the NOFA. Additionally, staff is moving forward with preparing a Capital Fund Recovery Competition grant application and I will provide more detail regarding the scope of the grant application in subsequent monthly updates.

Should you have any further questions or require more information, please contact me or Maria Badrakhan, Acting Assistant Executive Director.

c: Each Deputy
Lari Sheehan, Deputy Chief Executive Officer, Chief Executive Office

Attachment

CLPHA
making public housing work in your community

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May 14, 2009

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Room 10000
Washington, D.C. 20410-0002

Dear Mr. Secretary:

We commend you and HUD staff for the timeliness with which stimulus funds have been made available to public housing agencies from the American Recovery and Reinvestment Act of 2009 (ARRA). However, I am writing to express CLPHA's serious concern about certain aspects of the recently released NOFA for Capital Fund Recovery Competition Grants under ARRA. As you may know, throughout the legislative process CLPHA has supported the approach of allocating a portion of the public housing stimulus funds through a streamlined competitive process that fosters innovation and promotes reinvestment activities that are aligned with the new administration's long-term policy goals. Yet, we must report that there are problems with the way this approach has been translated into the NOFA. We believe that the goals of innovation and reinvestment are undermined by the narrow NOFA requirements. In fact, our analysis shows that up to 75% of the housing authorities in major metropolitan areas, including New York City, Los Angeles, Chicago and Baltimore, will not be eligible in the first round of funding. Furthermore, some may not be eligible until the third round of funding.

In particular, we ask you to reconsider certain threshold funding criteria, including those related to "high performer" status and "normative expenditure rate" requirements. These criteria for stimulus funds have no basis in ARRA or any other legislative intent and we believe they are counterproductive to ARRA's goals. We understand that in successive rounds of funding under the NOFA, the High Performer and Expenditure Rate requirements would be dropped from the funding decisions. However, it could very well be that no significant amounts of funding will remain after the first round for most funding categories, making these initial round thresholds the determinative criteria for eligibility and further, the opportunity for potential recipients who do not meet these thresholds to receive funding under each category could be significantly reduced. In fact some housing authorities do not plan to apply these funds given these newly-imposed and arbitrary thresholds. For these reasons, we request that you issue an addendum to the NOFA or otherwise implement changes that would remedy these problems as well as the others described below.

- **High Performer Status**. In ARRA, Congress clearly spelled out a number of funding priorities and restrictions for public housing capital funds, but said nothing about "high-performer" status under PHAS. Yet, the NOFA gives the highest preference to that category. The PHAS system has been a source of controversy in public housing for a number of years and is undergoing further revision at this moment. In fact, HUD reaches all the way back to 2006 and 2007 in this NOFA to identify High Performers. We do not believe it is a sufficiently reliable indicator of PHA capacity as to have so prominent a place in the allocation of stimulus funding. Further, due to challenges in managing older public housing properties in urban areas in an era of chronic underfunding from HUD, a priority for high performers excludes many large metropolitan areas from funding. We request that you withdraw high performer status as a priority category under the NOFA, and make the funding round open to high performers and standard performers.

For any threshold criteria remaining in the NOFA, MTW authorities should be deemed to qualify as long as the authority is in compliance with its MTW agreement. This is necessary because when MTW agencies use their full MTW authority, they do not report on their activities in HUD's standard reporting systems in order foster innovation and creativity. Not to provide these modifications would violate the MTW statutory prohibition on diminishing funds for an MTW agency because of their MTW status.

- **Expenditure Rates**. The threshold requirement that PHAs be in compliance with certain new, arbitrary expenditure rates for capital funds disqualifies many PHAs from the initial funding round, even if they have consistently demonstrated their capacity to complete capital projects. This situation is very troubling because it excludes PHAs who have consistently complied with all existing statutory and regulatory requirements applicable to the obligation and expenditure of public housing capital funds. By contrast to regulatory obligation and expenditure requirements, the expenditure rate thresholds in the NOFA have no statutory or regulatory basis in ARRA or otherwise. As a result, the NOFA makes agencies accountable retroactively for requirements that were never in place and for expenditure timeframes that were never before held out by HUD as a goal, let alone as a performance standard. Further, it ignores the fact that there may be valid local planning and management reasons for an agency to spend down different grants at different rates, including regulatory requirements that can vary from year to year and prudent fiscal, management and development decisions that exhibit good stewardship of federal funds that should be replicated rather than discouraged (for example, development projects do not frequently proceed on the linear pace envisioned by the Expenditure Rates). We request that you issue a correction to the NOFA which eliminates this requirement. The threshold requirement should be consistent with current statutory requirement of two years to obligate and four years to expend.

- **Low Poverty Census Tracts**. We find the requirement that funds in the Public Housing Transformation category can only be invested in projects located in census tracts with poverty rates less than 20% to be extremely troublesome and counterproductive for our members, HUD, and most importantly, public housing residents. Due to historical development patterns, as well as federal and local government policies that were misguided or worse, nearly 75% of public housing units are located in census tracts with poverty levels above 20%. These are units are in developments in neighborhoods that are in dire need of reinvestment that will spur both physical improvements and job creation to support low-income families as part of a broad economic recovery. We recognize, support, and offer our assistance to work with you in developing strategies to deconcentrate poverty in assisted housing and open housing opportunities for low-income families in low-poverty neighborhoods. However, we cannot advance policies which further disadvantage families who happen to live in neighborhoods where public housing was built many years ago. Again, we ask you to withdraw this requirement.

- **Demolition and/or Disposition Approval**. The Gap Financing category provides that the PHA must have received demolition and/or disposition approval, as applicable, no later than the date of the publication of the NOFA. We believe that this is not an indicator of a shovel ready project and have seen many projects that have had applications for disposition in the SAC for long periods of time, only to receive approval almost simultaneously with mixed finance approval (and it seems prudent to align the disposition application with the mixed finance evidentiary processes which have, as of late, been disrupted by the economic conditions that this NOFA intends to address). We believe that the requirements to show funding commitments provides sufficient evidence of a shovel-ready project and that disposition approval is not an appropriate requirement, especially since it is granted by HUD and largely in HUD's control. We suggest that a pending application or evidence that a project can achieve the milestones sufficient to achieve a mixed finance evidentiary approval within a discreet period of time (i.e. 6-12 months) provide reasonable, alternative measures. In addition, it should clarify that the "date of publication" refers to publication in the Federal Register, rather than posting on the web site.

- **Leveraging Requirements.** There are activities undertaken by housing authorities that cannot be leveraged with non-public housing sources such as Sec. 504 compliance, demolition and general public housing modernization. These activities are typically funded with public housing dollars exclusively because there are few or no non-public housing sources of funding available for these purposes. Furthermore, the timeframes for securing leveraging dollars could not be met in the timeframes established by the NOFA. Leveraging requirements should be eliminated for these activities.

Thank you for considering our request. We look forward to continuing to work with you to ensure that stimulus funds for public housing are used in a timely and effective manner to improve our low income communities and get our economy back on track.

Sincerely,

Sunia Zaterman

Sunia Zaterman
Executive Director

Cc: Paula Blunt
Laurel Blatchford